



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 31, 1998

Mr. James T. Jeffrey, Jr.
Remington & Jeffrey, P.C.
1306 W. Abram
Arlington, Texas 76013-1711

OR98-1804

Dear Mr. Jeffrey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 117157.

The Pantego Police Department (the "department") received an open records request for a particular offense report pertaining to the alleged theft of a cellular telephone. You contend the requested information is excepted from required public disclosure pursuant to sections 552.101, 552.103, and 552.108 of the Government Code.¹

¹You also contend that the requested information is confidential in accordance with the Texas Supreme Court's holding in *Hobson v. Moore*, 734 S.W.2d 340, 341 (Tex. 1987). The *Hobson* case has no bearing on whether information is subject to public disclosure under the Open Records Act. In *Hobson*, the court cited the predecessor statute to section 552.108 by analogy and recognized a law enforcement investigation privilege from civil discovery. This office, in Attorney General Opinion JM-1048 (1989), cited *Hobson* and its progeny but noted that neither *Hobson* nor any other reported Texas case directly addressed whether the act's exceptions created new privileges from discovery. Subsequent to the court's holding in *Hobson*, the Seventy-first Texas Legislature added subsection (f) to section 14 of former article 6252-17a (now found at Government Code section 552.005):

(f) This Act does not affect the scope of civil discovery under the Texas Rules of Civil Procedure. The exceptions from disclosure under this Act do not create new privileges from discovery.

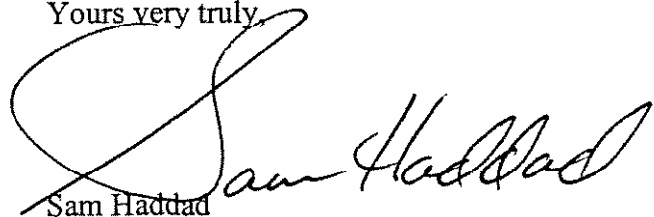
Act of May 29, 1989, 71st Leg., ch. 1248, § 18, 1989 Tex. Gen. Law 4996, 5029. This amendment reflects a legislative overruling of the court's dicta that the act's exceptions create privileges from discovery.

Section 552.108(a)(1) of the Government Code excepts from required public disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime." Because you state that the records at issue pertain to a pending criminal investigation, we conclude that you have met your burden of establishing that the release of the requested information at this time could interfere with law enforcement or prosecution. The department, therefore, may withhold most of requested the information at issue at this time pursuant to section 552.108(a)(1) of the Government Code.²

We note, however, that section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c). Consequently, the department must release the "basic information" about the alleged theft in accordance with *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976).³

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/RWP/mjc

²Because we resolve your request under section 552.108, we need not address your other arguments for non-disclosure. *But see* n.3, *infra*.

³It is this information that the requestor specifically seeks in the second part of his open records request. We additionally note that the department may not withhold these categories of information pursuant to section 552.101 or 552.103. *See* Open Records Decision No. 597 (1991). *See also* Open Records Decision No. 87 (1975) (when scope of request is unclear, governmental body should make good faith effort to advise requestor of types of documents available so that requestor may clarify request).

Ref.: ID# 117157

Enclosures: Submitted documents

cc: Mr. Charles L. Puff
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(w/o enclosures)